

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 2-2-2007

Coram

The Honourable Mr. Justice P. SATHASIVAM  
and  
The Honourable Mr. Justice N. PAUL VASANTHAKUMAR

W.A.No.3396 of 2002

V.K. Veeraraghava Reddy ... Appellant

Vs.

1. The District Revenue Officer,  
Chengalpattu District,  
Kancheeputam.
  2. The State of Tamil Nadu,  
rep.by its  
Commissioner and Secretary to Government,  
Revenue Department,  
Fort St.George,  
Chennai - 600 009.
  3. The President,  
Tambaram Muslim Jamath,  
Tambaram,  
Chennai - 600 045.
- ... Respondents

Writ appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.9222 of 1995 dated 6.9.2002 filed under Article 226 of the constitution of India to issue a Writ of Ceritorarified Mandamus calling for the records pertaining to the passing of G.O.Ms.430/Revenue Department dt. 25.5.95 and quash the same and direct the second Respondent to issue necessary order for resumption of the said Land in Survey No. 324/IAIB in Tambaram Village, and on such resumption assign the same to the petitioner herein and pass such other suitable orders as this Hon'ble Court may deem fit.

For Appellant : Mr.M.S.Subramanian

For Respondents : Mr.K.Elango,  
1&2 Spl. Govt. Pleader

For Respondents 3 : Mr. Muneerudin Shefiff

## J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is filed against the order of the learned single Judge dated 6.9.2002 dismissing W.P.No.9222 of 1995 filed by the appellant herein.

2. The brief facts necessary for disposal of the writ appeal are as follows.

(a) Third respondent Jamaith was allotted 23 cents of land for running Arabic School in S.No.324/1A/1B of Tambaram Village, Saidapet Taluk, the then Chenglepat District in the year 1963. The third respondent constructed shops and violated the conditions, particularly the special condition that the land should be used only for running the Arabic School and not for any other purpose.

(b) According to the appellant, he too applied for allotment of the land and one Varadarajulu submitted representation before the authorities pointing out the violations of conditions of allotment and no action having been taken, he filed W.P.No.1482 of 1972 before this Court and this Court by order dated 20.6.1972 directed the District Revenue Officer to look into the subject matter of the representations dated 5.9.1971, 25.11.1971 and 17.1.1972 and dispose of the same in accordance with law within three months. The said Varadarajulu filed the writ petition in his capacity as the President of Tax Payers Association, Tambaram.

(c) It is further stated in the affidavit that the third respondent constructed 13 shops in the said land and the same was brought to the notice of the Government and the Government also found that the third respondent violated the conditions of allotment. A show cause notice was issued to the third respondent to show as to why the land allotted shall not be resumed for violations of the conditions of allotment. As part of the land having been used for commercial purpose, the first respondent recommended for collection of double the market value and consequently the second respondent directed to collect double the market value for the lands and issued notice to the third respondent to pay the said amount within 15 days from the date of receipt of the notice, failing which action will be taken to resume the lands.

(d) According to the appellant, the said double the market rate was not paid and despite the petitioner's representation submitting the objections, no action having been taken, he filed W.P.No.7717 of 1981 and another resident of Tambaram filed W.P.No.7718 of 1981 and both the writ petitions were disposed of on 29.11.1989 by common order. The prayer in the said writ petitions were,

"W.P.No.7717/1981: To issue a writ of mandamus calling for the records pertaining to R.Dis.2862/63 dated 17.4.1963 relating to S.No:324/1A of an extent of 23 cents in Tambaram Town and to direct the 1st respondent, viz., to resume the said land and re-grant the same to the petitioner.

W.P.No.7718/1981: To issue a writ of mandamus to call for the records relating R.Dis.2862/63 dated 17.4.1963 relating to S.No.324/1A and to resume the said land and consider the re-grant of the land for a community hall."

This court by order dated 29.11.1989 held that the order of the District Revenue Officer has been cancelled by the Government in its memo dated 28.6.1971 by accepting the recommendations of the Board of Revenue and therefore that portion of the prayer in the writ petition to cancel the assignment has become infructuous. Insofar as the second portion of the prayer to grant the assignment in favour of the petitioner, this court directed the appellant to approach the Government by filing an application offering to pay five times the market value of the land and on such application being made, the Government should consider the representation along with the claim made by the Muslim Jamaith for modification of the order of the District Revenue Officer dated 19.8.1980.

(e) Appellant made representations from 23.12.1989 onwards and also offered to pay five times the market value of the land. The third respondent also challenged the portion of the order directing to pay double the market rate by filing an application for review. Thereafter the Government passed the order in G.O.Ms.No.430 Board of Revenue Department, dated 25.5.1995 by rejecting the request of the appellant and allowing the appeal filed by the third respondent seeking cancellation of the order directing payment of double the market value of the land.

(f) The said government Order is attacked on the ground that the third respondent having violated the conditions of allotment and the entire 23 cents of land were allotted only for running Arabic School and not for other purposes and the appellant having offered to pay five times the market value his request should have been considered.

3. Third respondent filed counter affidavit, wherein it is stated as follows.

(i) The third respondent approached the Government from 1950 for assignment of land for the purpose of running Arabic School next to the Mosque at Tambaram, situated in S.No.324/1A2 with an extent of 10 cents, which had been allocated by the Government for construction of Chavadi.

The Government, after considering the representations received, decided that if the third respondent could arrange alternate site for Chavadi, one contiguous 23 cents could be made available to the third respondent for running the Arabic School.

(ii) The District Revenue Officer by his letter dated 8.3.1963 informed the third respondent that it should purchase private land measuring about 10 cents in S.No.329/1B1 at Tambaram village from out of the third respondent's fund by private negotiation and put the same at the disposal of the Government as the alternative site for the construction of Chavadi and that the original Chavadi site in S.No.321/4 measuring 10 cents along with the balance 13 cents of land in S.No.324/1 would be given to the third respondent.

(iii) It is also stated therein that the District Revenue Officer informed the third respondent that 13 cents of land had been valued at Rs.65/- on non-commercial basis and the third respondent was directed to pay the same to the Treasury. The third respondent complied with the directions and on compliance an extent of 23 cents in S.No.324/1A/1B was delivered to the third respondent as per the proceedings dated 17.4.1963.

(iv) It is further stated in the counter affidavit that originally classes for Arabic School were conducted run in a thatched Shed and thereafter the strength of the school increased and the management had to raise resources to maintain the school and thereafter the third respondent resolved to construct shops in the 10 cents of the land, which was given to the third respondent in exchange of the land purchased by it and given by the Government for construction of Chavadi only to maintain the Arabic School and the income derived was utilised only to run Arabic School as no fees were collected from the students. Thereafter the writ petitions were filed by the appellant and another person as stated in the affidavit. The appellant is one of the sub-tenant of one of the tenants of the Arabic School.

(v) The Government issued G.O.Ms.No.2662 Revenue, dated 20.11.1978 and directed the third respondent to remit Rs.60,854.50 as double the market value for the land measuring 13 cents on the ground that the third respondent had violated the conditions by constructing the shops. The Government passed the said order on the basis of the erroneous report of the District Revenue Officer and thereafter the third respondent filed appeal and by order dated 11.1.1981 the Government stayed the order and thereafter the review filed by the third respondent was allowed and the application filed by the appellant was dismissed.

4. The learned single Judge, taking note of the impugned order passed by the Government as well as the dismissal of W.P.No.7717 of 1981 filed by the appellant, wherein the prayer in respect of the allotment was not granted, came to the conclusion that there is no merit in the writ petition and dismissed the same.

5. The learned counsel for the appellant argued that the third respondent having violated the conditions of assignment and the appellant having offered five times of the market value, the second respondent ought to have cancelled the assignment of the land to the third respondent and allotted the land in favour of the appellant.

6. The learned counsel for the third respondent as well as the Government Pleader argued that the appellant has no locus standi to challenge the assignment granted in favour of the third respondent and the shops were constructed not in the 13 cents assigned to the third respondent, but only in the area of 10 cents, which was given to the third respondent by way of exchange and therefore there is no violation of conditions of assignment.

7. We have considered the rival submissions made by the learned counsel for the petitioner as well as the respondents.

8. The point in issue is whether the appellant has any right to seek assignment of the land in question and whether cancellation of the assignment granted in favour of the third respondent could be made by the second respondent.

9. It is not in dispute that only 13 cents of land was assigned to the third respondent and 10 cents of land was given on exchange as the third respondent purchased another 10 cents to locate the village Chavadi. From the impugned order in the writ petition i.e, G.O.Ms.No.430 Revenue Department, dated 25.5.1995, it is clear that the third respondent built the shops only in 10 cents of land given on exchange and not in the land given on assignment, an extent of 13 cents and therefore there is no violation of conditions of assignment. It is also found that in the said 13 cents of land, Arabic School is functioning and no shops are constructed. The said factual finding cannot be treated as perverse finding and after noting the same only, the earlier direction to pay double the market value was cancelled at the instance of the third respondent filing review. Hence the impugned order in writ petition cannot be found fault with.

10. As rightly observed by the learned single Judge the appellant has prayed for assignment of the land in question in his earlier writ petition filed in W.P.No.7717 of 1981, wherein he has specifically prayed for resumption of the said land and re-grant the same to the writ petitioner viz., the present appellant. The said prayer was negatived by the learned single Judge in para 12 to 14 of the Judgment, which read as follows,

"12. The prayer that in both the writ petitions being one to cancel the assignment granted in favour of the Muslim Jamaith by the District Revenue Officer, on 17.4.1963 and as the facts narrated above show that the said order of the District Revenue Officer had been modified by the Government in its Memo No:103000 12/66-21 dated 28.6.1971 by accepting the recommendation of the Board of Revenue, that portion of the prayer in the writ petitions to cancel the assignment has become infructuous. However, the second portion of the prayer is to grant an assignment of the land in question to the respective petitioners. In the affidavits filed in support of the writ petitions, it is repeatedly stated that the petitioners are prepared to pay five times the present market value of the land in case the land is to be assigned to them.

13. Since the appeal preferred by the Muslim Jamaith against the orders made in No.195732/78,N1 dated 19.5.1980 by the District Revenue Officer had been taken on file by the Government, as is seen from their letter No.59280/L1/81-4 dated 1.12.1981 when they granted stay, liberty, is given to the petitioners to approach the Government by filing applications offering to pay five times the market value of the land or such other amount as the petitioners may desire and when such applications are made, the Government would consider that representations along with the claim made by the Jamaith for modification of the order of the District Revenue Officer, dated 10.8.1980. The petitioners are given 8 weeks time from this date to file suitable representations to the Secretary to Government, Revenue Department, Madras-9.

14. Subject to the above observations the writ petitions will stand dismissed. ...."

From a perusal of the above order it is clear that the prayer for cancellation of the allotment in favour of the third respondent was negatived and a liberty was given to the appellant to submit an application expressing his willingness to pay five times the present

market value of the land, if it is assigned in his favour. The said request having been considered and rejected and the order having become final, it is not open to the appellant to re-agitate his claim by filing the present writ petition which was rightly rejected by the learned single Judge.

11. The learned single Judge also gave a finding that the appellant happens to be a lessee under the third respondent in respect of one of the shops already constructed in violation of the conditions imposed by the Government and therefore it is obvious that the appellant is trying to pursue his individual claim by challenging the order passed in favour of the third respondent.

12. Since the appellant having failed to get any order in the earlier round of litigation and having regard to the facts in this case, wherein the second respondent found that the third respondent has not violated any of the conditions of assignment, we see no merit in the writ appeal and the same is dismissed. No costs.

vr

Sd/-  
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1. The District Revenue Officer,  
Chengalpattu District, Kancheeputam.
2. The Commissioner and Secretary to Government,  
Revenue Department, Fort St.George, Chennai - 600 009.

+ One cc to The Govt Pleader SR 6273.

TS (co)  
sg 8/2/07

Judgment in  
W.A.No.3396 of 2002  
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